

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.416 OF 2000

In the matter of Winding up of K.M. Adkar Products Ltd.

Creative Eye Ltd.....Respondent

Ms. Anita Castelino i/b. Pandya Gandhi & Co., for
the Petitioners.

None for the Respondents.

CORAM: A.M. Khanwilkar,J.

DATE : 4th August, 2005

P.C.:

1. Heard Counsel for the petitioners. None appears for the Respondents, though served. No reply is filed opposing this petition.

2. Petitioners' case is that under Agreement dated 22nd January, 1999 entered into between the petitioners and the respondent company, the petitioners agreed to advertise the products of the company. The petitioners discharged their obligation under the said agreement. The petitioners raised bill for the services rendered by the petitioners to the respondent company. By letter dated 2nd July, 1999 the respondent company has acknowledged its liability and has expressed regret for the delayed payment. It is mentioned in this communication that due to business problems faced by the company during last 3 months the payment has been delayed. In other words the liability to pay the amount for the services rendered by the petitioners is acknowledged by the respondent company, which is stated to be around Rs.51,95,000/- as on 28th July, 1999. Eventually the petitioners issued statutory notice on 20th August, 1999 calling upon the respondent company to pay the outstanding amount of Rs.59,95,000/- forthwith. Neither any payment was received nor any reply sent by the respondent company this statutory notice.

Eventually the present petition has been filed in this Court under Sections 433 and 434 of the Companies Act on 21st January, 2000. Before admission of the petition the respondent company was duly served. In spite of service none appeared for the respondent nor any reply was filed. This Court was pleased to admit the present petition on 12th January, 2001. After admission, the petition has been duly advertised and published. In spite of service of notice and publication the respondent company has not chosen to appear in the present proceedings nor any reply has been filed to controvert the assertions made in the present petition.

3. On going through the pleadings and the documents on record as the respondent company has not filed any reply the assertions in the petition have remained uncontroverted. Besides, the respondent company having failed to send any reply to the statutory notice or the respondent make any payment as was demanded the legal presumption against the respondent company has remained un rebutted. If it is so this Court has no option but to allow the petition in terms of prayer clauses (a) and (b). Ordered accordingly.

(A.M. KHANWILKAR, J.)